

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SPECTRUM MAILING SYSTEMS, INC.

and

Case 22--CA--11981

DISTRICT 65, U.A.W., AFL--CIO

DECISION AND ORDER

Upon a charge filed 8 November 1982 by District 65, U.A.W., AFL--CIO, herein called the Union, and duly served on Spectrum Mailing Systems, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint 20 December 1982, against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 8(d) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges that the Respondent violated Section 8(a)(5) and (1) and Section 8(d) of the Act by unilaterally failing to remit certain amounts of severance pay owed its employees as required by the collective-bargaining agreement between the Union and the Respondent. The Respondent did not file an answer to the complaint.

On 1 April 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. On 8 April 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Respondent did not file a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint served on the Respondent stated that, unless an answer was filed within 10 days from the service thereof, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." As noted above, the Respondent has not filed an answer to the complaint, nor has it responded to the Notice to Show Cause. No good cause to the contrary having been shown, in accordance with Section 102.20 of the Board's Rules set out above, the allegations of the complaint are deemed ad-

mitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.¹

Upon the entire record in this proceeding, the Board makes the following

Findings of Fact

I. The Business of the Respondent

The Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New Jersey. At all times material, the Respondent has maintained an office and place of business in Belleville, New Jersey, where it is engaged in the manufacture and assembly of mailing systems.

During the 12 months preceding the complaint, which are representative of its operations generally, the Respondent, in the course and conduct of its business operations, sold and shipped from its Belleville, New Jersey facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of New Jersey.

We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

District 65, U.A.W., AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

¹ In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Company to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

Act:

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the

All mechanics and employees engaged in the manufacture and assembly of mailing machines, but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act.

Since 8 July 1980, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the above-described unit and has been so recognized by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements between the Union and the Respondent, the most recent of which was effective by its terms for the period 8 July 1980 to 7 July 1982.

Since on or about 28 July 1982 and 24 September 1982, and continuing to date, the Respondent has unilaterally failed and refused to remit certain amounts of severance pay owed its employees as required by the collective-bargaining agreement between the parties.

We therefore find that by failing to make the severance payments owed its employees as required by the collective-bargaining agreement, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

III. The Unfair Labor Practices

V. The Remedy

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1), and Section 8(d) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent has unilaterally failed to make contractually required severance payments to its employees in violation of Section 8(a)(5) and (1) of the Act. In order to dissipate the effects of this unlawful action, we shall order the Respondent to make whole its employees by paying the severance payments due them, as required by the collective-bargaining agreement. Such payments shall be made with interest as prescribed in Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing Co., 138 NLRB 716 (1962).

Conclusions of Law

1. Spectrum Mailing Systems, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District 65, U.A.W., AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All mechanics and employees engaged in the manufacture and assembly of mailing machines, but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing on or about 28 July and 24 September 1982, and at all times material thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondent in the appropriate unit and by unilaterally failing and

refusing to make severance payments owed the employees as required by the

collective-bargaining agreement, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and Section

8(d) of the Act.

5. By the aforesaid refusal to bargain, the Respondent has interfered

with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Spectrum Mailing Systems, Inc., Belleville, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively concerning rates of pay, wages,

hours, and other terms and conditions of employment with District 65, U.A.W.,

AFL-CIO, as the exclusive bargaining representative of its employees in the

following appropriate unit:

All mechanics and employees engaged in the manufacture and assembly of mailing machines, but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Unilaterally failing and refusing to make severance payments owed to

employees as required by the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or

coercing employees in the exercise of the rights guaranteed them by Section 7

of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Make whole the employees in the appropriate unit by transmitting the severance payments owed to the employees pursuant to the terms of its collective-bargaining agreement with the Union, in the manner set forth in the section of this decision entitled ''The Remedy.''

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Belleville, New Jersey, place of business copies of the attached notice marked ''Appendix.'' ² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(SEAL)

NATIONAL LABOR RELATIONS BOARD

Patricia Diaz Dennis,
Member

Don A. Zimmerman,
Member

Donald L. Dotson,
Chairman

Dated, Washington, D.C. 30 March 1984

of this Order what steps the Respondent has taken to comply.

(e) Notify the Regional Director in writing within 20 days from the date

D--1598

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District 65, U.A.W., AFL--CIO, as the exclusive representative of the employees in the following appropriate unit:

All mechanics and employees engaged in the manufacture and assembly of mailing machines, but excluding all professional employees, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT unilaterally refuse to make severance payments to our employees as required by the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described above, with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL make whole the employees in the appropriate unit by paying to them the severance payments as required by the collective-bargaining agreement, plus interest.

SPECTRUM MAILING SYSTEMS, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Peter D. Rodino Jr. Federal Building, Room 1600, 970 Broad Street, Newark, New Jersey 07102, Telephone 201--341--3652.